

FILED

APR 10 2017

Clerk, U.S. District Court
District Of Montana
Billings

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

ROBIN BENSON,

Plaintiff,

vs.

LINDA McCULLOCH, in her official
capacity as Montana's Secretary of
State, JONATHAN MOTL, in his
official capacity as Montana's
Commissioner of Political Practices,
TIMOTHY FOX, in his official
capacity as Montana's Attorney
General,

Defendants.

CV 6:16-97-SPW


NOTICE TO CONSOLIDATE
THE PRELIMINARY
INJUNCTION HEARING
WITH A HEARING ON THE
MERITS

Before beginning a hearing on a motion for a preliminary injunction, the court may advance the hearing on the merits to consolidate it with the hearing on the preliminary injunction. Fed. R. Civ. P. 65(a)(2). Consolidation may occur "only after the parties receive clear and unambiguous notice of the court's intent to do so either before the hearing commences or at a time which will still afford the parties a full opportunity to present their respective cases." *Woe by Woe v. Cuomo*, 801 F.2d 627, 629 (2d Cir. 1986). "The giving of formal notice ensures both that a party may avail himself of every opportunity to present evidence pertinent to his

position and that all genuine issues of fact are before the court.” *Woe by Woe*, 801 F.2d at 629. But “[a] party cannot lay back, acquiesce in the merger of a preliminary hearing with a permanent one, and then protest the procedure for the first time after the case is decided adversely to it.” *K-Mart Corp. v. Oriental Plaza, Inc.*, 875 F.2d 907, 914 (1st Cir. 1989).

Pursuant to Rule 65(a)(2), the Court hereby issues notice that it is consolidating Benson’s Motion for a Preliminary Injunction with a hearing on the merits of Benson’s request for a permanent injunction. The Parties have five days from the date of this Order to object. If neither party objects, the Court will issue an order setting a date for a hearing on the merits.

DATED this 10th day of April, 2017.


SUSAN P. WATTERS
United States District Judge